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WESTERN DISTRICT OF WASHINGTON
SEATTLE



09-CV-01769-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PLAY VISIONS, INC., a Washington
corporation

Plaintiff,

v.

DOLLAR TREE, INC., a Virginia corporation

Defendant.

Civil Action No.

09-1769 MJP

COMPLAINT FOR COPYRIGHT
INFRINGEMENT, PATENT
INFRINGEMENT, FEDERAL AND
STATE UNFAIR COMPETITION,
UNLAWFUL IMPORTATION,
TRADEMARK INFRINGEMENT AND
VIOLATION OF THE LANHAM ACT

JURY TRIAL REQUESTED

Plaintiff Play Visions, Inc. ("Play Visions") hereby alleges the following causes of action
against Defendant Dollar Tree, Inc. ("Dollar Tree").

I. PARTIES

1. Play Visions is a corporation organized and existing under the laws of the state of
Washington, having its principal place of business at 19180 144th Avenue NE, Woodinville,
Washington.

2. Upon information and belief, Defendant, Dollar Tree, Inc. ("Dollar Tree"), is a
Virginia corporation with its principal place of business at Chesapeake, Virginia. Dollar Tree
operates several stores in King County, Washington.

ORIGINAL

Summons issued SEA 3111 2

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, particularly including 35 U.S.C. § 271 and § 281. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a); under the copyright laws of the United States, 17 U.S.C. § 501 et seq. Jurisdiction is conferred upon this Court pursuant to 17 U.S.C. § 501(a) and 28 U.S.C. § 1331; the federal unfair competition laws of the United States, 15 U.S.C. § 1125(a) [Lanham Act § 43(a)]; and under the Washington State Consumer Protection Act R.C.W. 19.86.020, et seq. Thus, this Court has jurisdiction of this civil action under 28 U.S.C. §§ 1338(a) and 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367(a).

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and 1400(a) because the Defendants conduct business within this judicial district, and they or their agents or affiliates can be found in this judicial district. Acts giving rise to this complaint occurred within this judicial district.

III. FACTS COMMON TO ALL COUNTS

5. Play Visions is a manufacturer and wholesale distributor of impulse novelty toy products. Impulse novelty toys are generally single piece physical items susceptible to mass manufacture.

6. Play Visions has since at least as early as 1990 made, sold and transported in interstate commerce, and throughout the State of Washington, impulse or novelty toys. Play Vision's retailers for these products include Wal-Mart, Target, Toys R Us, Walgreens, Fred Meyer, Rain Forest Café, Cost Plus World Market, Inc., Borders Bookstores, Walt Disney World, Sea World, San Diego Zoo, Monterey Bay Aquarium, The National Aquarium, and many other retailers around the nation. Play Visions' products are also available online through "www.playvisions.com" and additionally, through "www.amazon.com" as well as other national and regional retailers.

1 7. Play Visions' toys have been recognized as leaders in the Novelty Toy market,
2 including recognition by the trade magazine for the toy, hobby, game and gift industry; toys such
3 as the "Inside Out Ball" have received recognition throughout the country. TDmonthly listed the
4 "Inside Out Ball" in 2007 as one of the ten "Most Wanted Novelty Toys." Most specifically, in
5 the area of forming toys, such as the accused devices, from thermoplastic rubber (TPR) resin,
6 Play Vision has gained the reputation as the world leader. The motto of Play Visions is
7 "Innovation not Imitation."

8 IV. PLAY VISIONS' UTILITY PATENT RIGHTS

9 8. On December 15, 1998, Scott Stillinger was awarded United States Patent No.
10 5,848,946 (the "'946 Patent"), entitled "Filled, Deformable Bladder Amusement Device With
11 Infinitely Changeable Pliability And Tactility Characteristics," granting Stillinger patent rights
12 on "an engageable, manipulable, infinitely configurable deformation structure including a fluid-
13 impervious bladder-like structure, and a composite filler mixture in the form of plural
14 independent particles thinly coated with a liquid lubricant disposed in a sealed condition within
15 the bladder-like structure." Play Visions is the exclusive licensee of all of the '946 Patent rights
16 including the sole right to bring an infringement action in Play Visions' own name.

17 9. On January 23, 2007, Mark Chernick and Webb T. Nelson were awarded United
18 States Patent No. 7,165,869 (the "'869 Patent"), entitled "Internally Illuminated Elastomeric
19 Novelty Device With External Projections," granting Chernick and Nelson patent rights on "an
20 internally illuminated novelty device having an electronics module contained within a
21 translucent elastic casing." Play Visions is the exclusive assignee of all of the '869 Patent rights
22 including the sole right to bring an infringement action in Play Visions' own name.

23 10. On May 29, 2007, Mark Chernick, Webb T. Nelson, Dustin S. Chernick, Adam J.
24 Chernick, and Martin L. Nelson were awarded United States Patent No. 7,223,150 (the "'150
25 Patent"), entitled "Illuminated Elastomeric Flying Disc And Its Method Of Manufacture,"
26 granting Chernick and Nelson patent rights on "an internally illuminated toy having a flexible

body that is made from an elastomeric gel.” Play Visions is the exclusive assignee of all of the ‘150 Patent rights including the sole right to bring an infringement action in Play Visions’ own name.

V. PLAY VISIONS’ DESIGN PATENT RIGHTS

11. On January 17, 2007, Mark Chernick and Webb T. Nelson were awarded United States Patent No. D 535,341 (the “‘341 Design Patent”), entitled “Elastomeric Tentacle Ball,” granting Chernick and Nelson patent rights on an “ornamental design for an elastomeric tentacle ball.” Play Visions is the exclusive assignee of all of the ‘341 Design Patent rights including the sole right to bring an infringement action in Play Visions’ own name.

12. On September 18, 2007, Mark Chernick and Webb T. Nelson were awarded United States Patent No. D 551,307 (the “‘307 Design Patent”), entitled “Elastomeric Novelty Ball With Protrusions,” granting Chernick and Nelson patent rights on an “ornamental design for an elastomeric novelty ball with protrusions.” Play Visions is the exclusive assignee of all of the ‘307 Design Patent rights including the sole right to bring an infringement action in Play Visions’ own name.

13. On March 4, 2008, Mark Chernick and Webb T. Nelson were awarded United States Patent No. D 563,493 (the “‘493 Design Patent”), entitled “Elastomeric Ball Having Protrusions Of Stacked Spheres,” granting Chernick and Nelson patent rights on an “ornamental design for an elastomeric ball having protrusions of stacked spheres.” Play Visions is the exclusive assignee of all of the ‘493 Design Patent rights including the sole right to bring an infringement action in Play Visions’ own name.

VI. PLAY VISIONS’ COPYRIGHT

14. Play Visions developed or caused to be developed under its direction or control a unique and original centipede sculpture (“Elastomeric Centipede” sculpture).

1 15. Play Visions' "Elastomeric Centipede" sculpture embodies certain idealistic
2 characteristics of a centipede along with stylized accents to emphasize the item's aesthetic
3 appeal, forming a truly unique work of art.

4 16. Play Visions' "Elastomeric Centipede" sculpture is also a widely successful
5 novelty item, well-known throughout the United States and internationally.

6 17. On the Effective Date of October 29, 2007, Play Visions was awarded a
7 registration for a Visual Material Copyright No. VAu 958-361, entitled "Elastomeric Centipede."

8 **VII. PLAY VISIONS' IDENTITY IN THE MARKETPLACE**

9 18. Play Visions' "Elastomeric Centipede" sculpture is primarily non-functional and
10 visually distinctive, is prominently displayed to Play Visions' customers and to the purchasing
11 public through advertising and its presence on the Play Visions web site, and is recognized by
12 Play Visions' customers as an indicator of source. Play Visions' use of the "Elastomeric
13 Centipede" sculpture design has been exclusive and continuous and has resulted in that product
14 configuration having acquired a secondary source-indicating significance with Play Visions'
15 customers. Play Visions has extensively advertised the "Elastomeric Centipede" sculpture
16 product configuration to its customers and has sold the Elastomeric Centipede in around the
17 nation including through the Wal-Mart chain of stores.

18 19. Play Visions has sold at least one product through channels of commerce having
19 an ornamental design for an elastomeric tentacle ball; the design is primarily non-functional and
20 visually distinctive, is prominently displayed to Play Visions' customers and to the purchasing
21 public through advertising and its presence on the Play Visions web site, and is recognized by
22 Play Visions' customers as an indicator of source. Play Visions' use of the ornamental design for
23 an elastomeric tentacle ball has been exclusive and continuous and has resulted in that product
24 configuration having acquired a secondary source-indicating significance with Play Visions'
25 customers. Play Visions has extensively advertised the ornamental design for an elastomeric
26 tentacle ball product configuration to its customers.

1 20. Play Visions has sold at least one product through channels of commerce having
2 an ornamental design for ornamental design for an elastomeric novelty ball with protrusions; the
3 design is primarily non-functional and visually distinctive, is prominently displayed to Play
4 Visions' customers and to the purchasing public through advertising and its presence on the Play
5 Visions web site, and is recognized by Play Visions' customers as an indicator of source. Play
6 Visions' use of the ornamental design for an elastomeric novelty ball with protrusions has been
7 exclusive and continuous and has resulted in that product configuration having acquired a
8 secondary source-indicating significance with Play Visions' customers. Play Visions has
9 extensively advertised the ornamental design for an elastomeric novelty ball with protrusions
10 product configuration to its customers.

11 21. Play Visions has sold at least one product through channels of commerce having
12 an ornamental design for ornamental design for an elastomeric ball having protrusions of stacked
13 spheres; the design is primarily non-functional and visually distinctive, is prominently displayed
14 to Play Visions' customers and to the purchasing public through advertising and its presence on
15 the Play Visions web site, and is recognized by Play Visions' customers as an indicator of
16 source. Play Visions' use of the ornamental design for an elastomeric ball having protrusions of
17 stacked spheres has been exclusive and continuous and has resulted in that product configuration
18 having acquired a secondary source-indicating significance with Play Visions' customers. Play
19 Visions has extensively advertised the ornamental design for an elastomeric ball having
20 protrusions of stacked spheres product configuration to its customers.

21 VIII. PLAY VISIONS' TRADEMARK

22 22. On March 22, 2005, Play Visions filed the word mark "Urchin Ball" for
23 registration as a trademark on the Primary Registry of the United States Patent and Trademark
24 Office in the category of "Goods & Services: Novelty Ball Having Elastomeric Protrusions". The
25 mark has been used continuously in commerce since January 15, 2004. On March 21, 2006, the
26 Office granted registration with registration number 3,070,851 after Play Visions disclaimed the

1 exclusive use of the word "ball" apart from "Urchin Ball". The registration has been
2 continuously maintained as a live mark since its registration.



3 23. On July 27, 2006, Play Visions filed the design mark as
4 pictured for registration as a trademark on the Primary Registry of the
5 United States Patent and Trademark Office in the category of "Goods &
6 Services: Plush Toys and Toy Figures". The mark has been used
7 continuously in commerce since July 27, 2006. On March 21, 2006, the
8 Office granted registration with registration number 3,263,359. The
9 registration has been continuously maintained as a live mark since its registration.

10 **IX. DOLLAR TREE'S INFRINGING ACTS-ACCUSATION OF DEVICES**

11 24. Headquartered in Chesapeake, Virginia, Defendant Dollar Tree is the largest and
12 most successful operator of discount variety stores selling everything for \$1 or less, operating
13 thousands of stores in all 48 contiguous states (operated 3,803 stores in 48 states as of October
14 31, 2009, with total retail selling square footage of 32.3 million and net sales in 2008 of 4.64
15 billion dollars) and nine distribution centers. Novelty or impulse toys constitute a significant
16 portion of the annual sales by Dollar Tree.

17 25. Upon information and belief, during the life of the relevant patents, Dollar Tree
18 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Urchin
19 Ball having a SKU 858447, the Flashing Urchin Ball infringing the '869 Patent and the '341
20 Design Patent, and the trademarks having registration number 3,070,851 and registration number
21 3,263,359. Upon further information and belief, Dollar Tree has, without authority, imported,
22 made, used, offered to sell, or sold at least 1,020,432 devices that infringe the '869 Patent and the
23 '341 Design Patent and the trademarks having registration number 3,070,851 and registration
24 number 3,263,359.

25 26. Upon information and belief, during the life of the relevant patents, Dollar Tree
26 has imported, made, offered to sell or sold to consumers, a product known as a Basket Stuffer

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1 Light Up UFO having a SKU 937141, the Basket Stuffer Light Up UFO infringing the '150
2 Patent and the '869 Patent. Upon further information and belief, Dollar Tree has, without
3 authority, imported, made, used, offered to sell, or sold at least 247,968 devices that infringe the
4 '150 Patent and the '869 Patent.

5 27. Upon information and belief, during the life of the relevant patents, Dollar Tree
6 has imported, made, offered to sell or sold to consumers, a product known as a Stretchy Light Up
7 UFO having a SKU 874036, the Stretchy Light Up UFO infringing the '150 Patent and the '869
8 Patent. Upon further information and belief, Dollar Tree has, without authority, imported, made,
9 used, offered to sell, or sold at least 201,888 devices that infringe the '150 Patent and the '869
10 Patent.

11 28. Upon information and belief, during the life of the relevant design patent, Dollar
12 Tree has imported, made, offered to sell or sold to consumers, a product known as a Tentacool
13 Ball having a Dollar Tree Inventory No. 975234 812 and a UPC code of 6 39277 53988 5, the
14 Tentacool Ball infringing the '493 Design Patent, and the trademark having registration number
15 3,263,359.

16 29. Upon information and belief, during the life of the copyright, Dollar Tree has
17 imported, made, offered to sell or sold to consumers, a product known as a Centipede having a
18 Dollar Tree Inventory No. 941143 812 and a UPC code of 6 39277 41143 3, the Centipede
19 infringing the copyright VAu 958-361.

20 30. Upon information and belief, during the life of the relevant patents, Dollar Tree
21 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Bead
22 Ball having a Dollar Tree Inventory No. 938931 711 and a UPC code of 6 39012 03080 6, the
23 Flashing Bead Ball infringing the '946 Patent and the '869 Patent.

24 31. Upon information and belief, during the life of the relevant patents, Dollar Tree
25 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Bug Out
26

1 Ball having a Dollar Tree Inventory No. 939196 711 and a UPC code of 6 39012 37020 9, the
2 Flashing Bug Out Ball infringing the '946 Patent and the '869 Patent.

3 32. Upon information and belief, during the life of the relevant patents, Dollar Tree
4 has imported, made, offered to sell or sold to consumers, a first version of a product known as a
5 Flashing Worm Ball having a Dollar Tree Inventory No. 874038 710 and a UPC code of 6 39277
6 74038 0, the Flashing Worm Ball infringing the '946 Patent and the '869 Patent.

7 33. Upon information and belief, during the life of the relevant patents, Dollar Tree
8 has imported, made, offered to sell or sold to consumers, a second version of a product known as
9 a Flashing Worm Ball having a Dollar Tree Inventory No. 874038 610 and a UPC code of
10 6 39277 74038 0, the Flashing Worm Ball infringing the '946 Patent and the '869 Patent.

11 34. Upon information and belief, during the life of the patent, Dollar Tree has
12 imported, made, offered to sell or sold to consumers, a first version of a product known as a
13 Stress Ball having a Dollar Tree Inventory No. 925026 77 and a UPC code of 6 39277 25026 1,
14 the Stress Ball infringing the '946 Patent.

15 35. Upon information and belief, during the life of the relevant patent, Dollar Tree
16 has imported, made, offered to sell or sold to consumers, a second version of a product known as
17 a Stress Ball having a Dollar Tree Inventory No. 925034 79 and a UPC code of 6 39277 25034 6,
18 the Stress Ball infringing the '946 Patent.

19 36. Upon information and belief, during the life of the relevant patent, Dollar Tree
20 has imported, made, offered to sell or sold to consumers, a product known as a Brainhead Ball
21 having a Dollar Tree Inventory No. 20012 02 0908A 986744 98 and a UPC code of 6 39277
22 86744 5, the Brainhead Ball infringing the '946 Patent.

23 37. Upon information and belief, during the life of the relevant design patent, Dollar
24 Tree has imported, made, offered to sell or sold to consumers, a product known as a Mini Urchin
25 Ball, the Mini Urchin Ball infringing the '341 Design Patent and the trademarks having
26 registration number 3,070,851 and registration number 3,263,359.

1 38. Upon information and belief, during the life of the relevant design patent, Dollar
2 Tree has imported, made, offered to sell or sold to consumers, a product known as a Lightning
3 Sun Ball having a Dollar Tree Inventory No. 925008 99 and a UPC code of 6 39277 25008 7, the
4 Lightning Sun Ball infringing the '307 Design Patent.

5 39. Upon information and belief, during the life of the relevant patent, Dollar Tree
6 has imported, made, offered to sell or sold to consumers, a product known as a Creepy Classics
7 Squeeze Skull having a Dollar Tree Inventory No. 925019 86 and UPC code of 6 39277 25019 3,
8 the Creepy Classics Squeeze Skull infringing the '946 Patent.

9 40. Upon information and belief, during the life of the relevant patent, Dollar Tree
10 has imported, made, offered to sell or sold to consumers, a product known as a Squeeze Helmet,
11 the Squeeze Helmet infringing the '946 Patent.

12 41. Upon information and belief, during the life of the relevant patent, Dollar Tree
13 has imported, made, offered to sell or sold to consumers, a product known as a Flashing Puffer
14 Ball having a Dollar Tree Inventory No. 925025 811 and a UPC code of 6 39277 25025 4, the
15 Flashing Puffer Ball infringing the '341 Design Patent and the trademark having registration
16 number 3,263,359.

17 42. Upon information and belief, during the life of the relevant patent, Dollar Tree
18 has imported, made, offered to sell or sold to consumers, a product known as a Puffer Ball Glow
19 in the Dark having a Dollar Tree Inventory No. 986737 98 and a UPC code of 6 39277 86737 7,
20 the Puffer Ball Glow in the Dark infringing the '341 Design Patent and the trademark having
21 registration number 3,263,359.

22 43. Upon information and belief, during the life of the relevant patent, Dollar Tree
23 has imported, made, offered to sell or sold to consumers, a product known as a 2 Tone White
24 Puffer Ball Glow in the Dark having a Dollar Tree Inventory No. 986738 96 and a UPC code of
25 6 39277 86738 4, the Puffer Ball Glow in the Dark infringing the '341 Design Patent and the
26 trademark having registration number 3,263,359.

1 44. Upon information and belief, during the life of the relevant patent, Dollar Tree
 2 has imported, made, offered to sell or sold to consumers, a product described as an Inflatable
 3 Spiky Ball, the Inflatable Spiky Ball infringing the '341 Design Patent and the trademark having
 4 registration number 3,263,359.

5 45. Upon information and belief, during the life of the relevant patent, Dollar Tree
 6 has imported, made, offered to sell or sold to consumers, a product known as a Squeeze Foam
 7 Ball having a Dollar Tree Inventory No. 953991 94 and a UPC code of 39277 53991 5, the
 8 Squeeze Foam Ball infringing the '946 Patent.

9 46. Upon information and belief, during the life of the relevant patent, Dollar Tree
 10 has imported, made, offered to sell or sold to consumers, a product known as a Yucky Skull
 11 Bead Ball having a Dollar Tree Inventory No. 986741 96 and a UPC code of 6 39277 86741 4,
 12 the Yucky Skull Bead Ball infringing the '946 Patent.

13 X. FIRST CAUSE OF ACTION—COPYRIGHT INFRINGEMENT

14 47. Defendants have willfully committed copyright infringement under 17 U.S.C.
 15 § 501 et seq., directly, by inducement, or by way of contributory liability, by knowingly aiding,
 16 causing, or committing, the unauthorized practice or execution of one or more exclusive rights
 17 owned by Play Visions as those rights are set forth in 17 U.S.C. § 106, said exclusive rights
 18 having been perfected by U.S. Copyright Registration No. VAu 958-361, entitled "Elastomeric
 19 Centipede."

20 48. Defendants have willfully committed patent infringement under 35 U.S.C. § 101
 21 et seq., directly, by knowingly aiding, causing, or committing, the unauthorized practice or
 22 execution of one or more exclusive rights owned by Play Visions as those rights are set forth in
 23 35 U.S.C. § 271(a), said exclusive rights having been perfected by the award of one or more of:

- 24 • United States Patent No. 5,848,946 (the "'946 Patent'"), entitled "Filled,
 25 Deformable Bladder Amusement Device With Infinitely Changeable
 26 Pliability And Tactility Characteristics,"

- United States Patent No. 7,165,869 (the “869 Patent”), entitled “Internally Illuminated Elastomeric Novelty Device With External Projections,” and
- United States Patent No. 7,223,150 (the “150 Patent”), entitled “Illuminated Elastomeric Flying Disc And Its Method Of Manufacture.”

49. Dollar Tree was placed on notice of Play Visions’ patent rights, by letter dated August 19, 2008, receipt of which John L. Deal, Corporate Counsel for Dollar Tree acknowledged in a letter dated August 22, 2008. On information and belief, Dollar Tree continued to sell the accused products thereafter. Play Visions is entitled to and therefore demands damages, costs and attorney’s fees as allowable under 35 U.S.C. §§ 284, 285 and 289, including a trebling of any award.

50. This is an exceptional case for purposes of awarding monetary damages, costs and attorney’s fees.

XI. SECOND CAUSE OF ACTION—DESIGN PATENT INFRINGEMENT

51. Defendants have willfully committed patent infringement under 35 U.S.C. § 101 et seq., directly, by knowingly aiding, causing, or committing, the unauthorized practice or execution of one or more exclusive rights owned by Play Visions as those rights are set forth in 35 U.S.C. § 271(a), said exclusive rights having been perfected by the award of one or more of:

- United States Patent No. D 535,341 (the “341 Design Patent”), entitled “Elastomeric tentacle ball,”
- United States Patent No. D 551,307 (the “307 Design Patent”), entitled “Elastomeric novelty ball with protrusions,” and
- United States Patent No. D 563,493 (the “493 Design Patent”), entitled “Elastomeric ball having protrusions of stacked spheres.”

52. Dollar Tree was placed on notice of Play Visions’ patent rights, by letter dated August 19, 2008, receipt of which John L. Deal, Corporate Counsel for Dollar Tree acknowledged in a letter dated August 22, 2008. On information and belief, Dollar Tree

1 continued to sell the accused products thereafter. Play Visions is entitled to and therefore
2 demands damages, costs and attorney's fees as allowable under 35 U.S.C. §§ 284, 285 and 289,
3 including a trebling of any award.

4 53. This is an exceptional case for purposes of awarding monetary damages, costs and
5 attorney's fees.

6 **XII. THIRD CAUSE OF ACTION—UNFAIR COMPETITION IN WASHINGTON STATE**

7 54. On information and belief, Defendant Dollar Tree offered to sell products
8 substantially identical in appearance to at least the following configurations:

- 9 • Play Visions' "Elastomeric Centipede" sculpture,
- 10 • Play Visions' "ornamental design for an elastomeric tentacle ball,"
- 11 • Play Visions' "ornamental design for an elastomeric novelty ball with
12 protrusions,"
- 13 • Play Visions' "ornamental design for an elastomeric ball having protrusions of
14 stacked spheres."

15 55. The above described acts of Defendant Dollar Tree, constitute an unfair or
16 deceptive act or practice and an unfair method of competition in the conduct of trade or
17 commerce in violation of R.C.W. 19.86.020 et seq. which thereby injured Play Visions in its
18 business and property.

19 56. Defendant Dollar Tree's aforesaid acts have been knowing, willful and without
20 Plaintiff's permission and have been intended to trade on Play Visions' goodwill in the State of
21 Washington.

22 **XIII. FOURTH CAUSE OF ACTION—FEDERAL UNFAIR COMPETITION**

23 57. Defendant Dollar Tree's aforesaid products mimic the well-known products of
24 Play Visions lending to the mind of the public a false designation of origin, which is likely to
25 confuse the public into believing that there is an affiliation, connection or association between
26

1 the source of the Defendant Dollar Tree's aforesaid product, and the source of Play Visions'
2 products.

3 58. Play Visions is likely to be damaged by such confusion as to affiliation,
4 connection or association of the type described. Dollar Tree's aforesaid products are of an
5 inferior quality to the well-known products of Play Visions.

6 59. The Defendant Dollar Tree's aforesaid acts have been knowing, willful and
7 without Play Visions' prior knowledge or consent and are therefore a violation of the Plaintiff's
8 rights under 15 U.S.C. § 1125(a) [§ 43(a) of the Lanham Act].

9 **XIV. SIXTH CAUSE OF ACTION-UNLAWFUL IMPORTATION**

10 60. The Defendant Dollar Tree has imported products that mimic the well-known
11 products of Play Visions lending to the mind of the public a false designation of origin, which is
12 likely to confuse the public into believing that there is an affiliation, connection or association
13 between the source of the Defendant Dollar Tree's aforesaid product, and the source of Play
14 Visions' products.

15 61. Play Visions is likely to be damaged by such confusion as to affiliation,
16 connection or association of the type described. Dollar Tree's aforesaid products are of an
17 inferior quality to the well-known products of Play Visions.

18 62. The Defendant Dollar Tree's aforesaid acts have been knowing, willful and
19 without Play Visions' prior knowledge or consent and are therefore a violation of the Plaintiff's
20 rights under 15 U.S.C. § 1124 [§ 42 of the Lanham Act].

21 **XV. SEVENTH CAUSE OF ACTION—FEDERAL TRADEMARK INFRINGEMENT**

22 63. Upon information and belief, Dollar Tree provided registered product
23 configurations to others not in privity with Play Visions so as to confuse the relevant purchasing
24 public as to the source, sponsorship, or affiliation of Play Visions products and offered for sale
25 and sold the configuration in commerce regulated by Congress.
26

64. Dollar Tree's actions in providing offering for sale and selling the registered product configuration were without the prior knowledge, permission, or consent of Play Visions and there violate Play Visions' exclusive rights under 15 U.S.C. § 1115.

65. In accord with 15 U.S.C. §§ 1116 and 1117, Play Visions is entitled to an injunction against further infringement and an award for actual damages it has suffered and all profits, gains, and advantages derived by Dollar Tree as a result of infringement of Play Visions' rights under the registered trademarks.

XVI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Play Visions prays for the following relief:

A. An order entering judgment in favor of Play Visions and awarding damages to Play Visions in the amount of Play Visions' actual damages and any profits of the Defendant Dollar Tree attributable to the infringing acts alleged herein, consistent with 17 U.S.C. §§ 504(a)(1) and (b).

B. An order finding that Dollar Tree has infringed Play Visions' copyright and entering judgment in favor of Play Visions and enjoining any further acts of infringement of the copyrights in the Play Visions' "Elastomeric Centipede" sculpture, and further ordering the destruction of all articles used (such as molds or data models) in the acts of infringement, consistent with remedies available under 17 U.S.C. § 503;

C. An order preliminarily and permanently enjoining and restraining Defendant Dollar Tree, its respective agents, servants, employees, attorneys, and all other persons in active concert or in participation with the Defendant, from importing, making, using, selling or offering to sell any product which infringes any claim of the asserted patents, awarding damages, together with interest, to compensate Plaintiff for the past infringement by the Defendant of the asserted patents, and that such award be trebled, and for an award to Plaintiff of all of its costs and reasonable attorney's fees with respect thereto in accordance with 35 U.S.C. §§ 284 and 285, and

1 for all of the profits made by the Defendant as a result of its infringing activity in accordance
2 with 35 U.S.C. § 289;

3 D. An order finding that the Defendant Dollar Tree has violated the Washington
4 State Consumer Protection Act, R.C.W. 19.86.020 et seq. and an award of damages, together
5 with interest, to compensate the Plaintiff for the Defendant's past acts of unfair competition and
6 misidentification of origin, and that such an award be trebled, and for an award to Plaintiff of all
7 of its costs and attorney's fees with respect thereto in accordance with R.C.W. 19.86.090;

8 E. An order finding that the Defendant Dollar Tree has violated § 43(a) of the
9 Lanham Act and preliminarily and permanently enjoining and restraining the Defendant, its
10 respective agents, servants, employees, attorneys and all other persons in active concert or in
11 participation with the Defendant from making any false designation of origin which is likely to
12 confuse the public, or cause mistake, or to deceive the public as to believing that there is an
13 affiliation, connection or association or the Defendant with the Plaintiff by virtue of a similarity
14 between the Defendant's products and the Plaintiff's impulse or novelty toys and awarding
15 damages in accordance with 15 U.S.C. § 1117(a) including all of the Defendant's profits,
16 damages sustained by the Plaintiff, and the costs of the action including a trebling of such
17 damages and that the court determine that this is an exceptional case and award the Plaintiff its
18 reasonable attorney's fees, and an order pursuant to 15 U.S.C. § 1116 requiring the Defendant to
19 produce all toys made or used in violation of Plaintiffs ornamental design, and of all molds or
20 other articles by means of which such toys may be reproduced for destruction and file and serve
21 a report in writing under oath setting forth in detail the manner and form in which the defendant
22 has complied with the injunction;

23 F. An order finding that the Defendant Dollar Tree has violated exclusive
24 trademarks and preliminarily and permanently enjoining and restraining the Defendant, its
25 respective agents, servants, employees, attorneys and all other persons in active concert or in
26 participation with the Defendant from violating Play Visions' registered trademarks which is

likely to confuse the public, or cause mistake, or to deceive the public as to believing that there is an affiliation, connection or association or the Defendant with the Plaintiff by virtue of a similarity between the Defendant's products and the Plaintiff's impulse or novelty toys and awarding damages in accordance with 15 U.S.C. § 1117(a) including all of the Defendant's profits, damages sustained by the Plaintiff, and the costs of the action including a trebling of such damages and that the court determine that this is an exceptional case and award the Plaintiff its reasonable attorney's fees, and an order pursuant to 15 U.S.C. § 1116 requiring the Defendant to produce all toys made or used in violation of Plaintiff's exclusive trademark, and of all molds or other articles by means of which such toys may be reproduced for destruction and file and serve a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction;

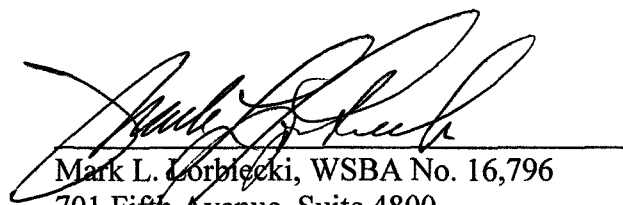
G. For other and further relief as is provided by law and that this court deems just and equitable.

XVII. JURY DEMAND

Plaintiff Play Visions demands a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED this 11th day of December, 2009.

BLACK LOWE & GRAHAM^{PLLC}



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